



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 12 2016

Mr. Benjamin Orr White

Pearl City, Hawaii 96782

RE: MUR 6843

Dear Mr. White:

The Federal Election Commission reviewed the allegations in your complaint received on June 18, 2014. On July 7, 2016, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations and close its file in this matter. Accordingly, the Commission closed the file on July 7, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the dispositive General Counsel's Report is enclosed for your information.

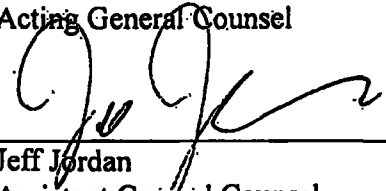
The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact me at (202) 694-1650.

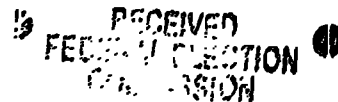
Sincerely,

Dan Petalas
Acting General Counsel

BY:


Jeff Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration

Enclosure: General Counsel's Report
Certification



2016 MAY 26 PM 4: 21

BEFORE THE FEDERAL ELECTION COMMISSION

**ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT**

CELA

MUR: 6843

Complaint Receipt Date: June 18, 2014

Response Date: July 14, 2014

**Respondents: Mark Takai for Congress, and
Edward Dion Kaimihana, as treasurer
(collectively the "Committee")**

EPS Rating: [REDACTED]

**Alleged Statutory/
Regulatory Violations:**

5 U.S.C. § 7321 *et seq.* (Hatch Act)

5 U.S.C. § 552a (Privacy Act)

52 U.S.C. § 30120(a)

11 C.F.R. § 110.11(a)(1), (3)

11 C.F.R. § 100.26

11 C.F.R. § 100.28

The Complainant alleges that then-Hawaii U.S. House candidate Mark Takai improperly solicited him for a campaign contribution when Takai telephoned the Complainant, who was on military duty in South Korea. The Complainant alleges that Takai's phone call and a follow-up email requesting a contribution did not contain proper disclaimers. The Complainant also alleges that Takai's solicitation may violate the Hatch Act.¹

A "public communication," such as a telephone bank, that solicits contributions requires a disclaimer identifying who paid for it and whether it was authorized by a candidate. In addition, a political committee must include disclaimers when it sends more than 500 substantially similar emails. In this case, there is no information demonstrating that Respondents solicited more than 500 potential contributors by phone in a substantially similar way or sent more than 500 emails

¹ The Commission does not have jurisdiction to enforce the Hatch Act, 5 U.S.C. § 7321 *et seq.*, and, therefore, we make no recommendation as to this allegation. Additionally, on June 4, 2015, the U.S. Attorney's Office in Hawaii forwarded to the Commission a complaint it received from Complainant. *See* Compl. Supp. That correspondence alleges that Respondents violated the Privacy Act, 5 U.S.C. § 552a, by obtaining contributor names from an Army personnel database. *See id.* We also make no recommendation regarding this allegation as it is not within the Commission's jurisdiction.

substantially similar to the ones the Complainant received. Specifically, the Complainant identifies only one phone call and two emails that allegedly lacked a disclaimer.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating and the other circumstances presented, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

Daniel A. Petalas
Acting General Counsel

Kathleen M. Guith
Acting Associate General
Counsel for Enforcement

5.26.16
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General
Counsel for Enforcement

1-800-4-NI0000

Elena Park

Elena Paoli
Attorney
Enforcement